

Date of Decision: 7th September 1995

SPECIAL CIVIL APPLICATION NO. 4415 of 1995

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Shri Saurin A. Shah, Advocate, for the Petitioner
Shri K.T. Dave, Asst. Govt. Pleader, for the Respondents

CORAM: A.N. DIVECHA, J.
(Date: 7th September 1995)

ORAL JUDGMENT

The order of detention passed by the Police Commissioner of Rajkot (Respondent No.3 herein) on 13th January 1995 under sec. 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 ('the PASA' for brief) is under challenge in this petition under Art. 226 of the Constitution of India at the instance of the petitioner himself.

2. It is not necessary to set out in detail the facts giving rise to this petition. It appears that respondent No.3 was of the opinion that the petitioner was acting in a manner prejudicial to the maintenance of public order. Thereupon the

impugned order of detention came to be passed and the petitioner was apprehended on the very day of the order. A copy of the impugned order of detention is at Annexure A to this petition and a copy of the grounds for detention is at Annexure B thereto.

3. Learned Advocate Shri Shah for the petitioner has urged before me several submissions in support of this petition. The submission which has impressed me most is the one based on release of the petitioner on parole on two occasions without imposing any stringent conditions. In support of his aforesaid submission, Shri Shah for the petitioner has relied on the Division Bench decision of this court in the case of Dilipkumar Amrutlal Ganatra v. The District Magistrate, Rajkot and Others reported in 1992(2) 33(2) G.L.R. 1471 and the unreported Division Bench ruling of this court in Special Criminal Application No. 1457 of 1994 decided on 30th January 1995. It has been held in the aforesaid Division Bench rulings that release of the detenu on parole without imposing stringent conditions at the relevant time would render unjustified the continued detention of the detenu under the order of detention.

4. In the present case, the petitioner was admittedly released twice on parole. On the first occasion he was released on parole for 7 days from 4th March to 10th March 1995 on the ground of his mother's demise. On the second time he was released on parole for 6 days from 28th April 1995 to 3rd May 1995 on the ground of the death of his male cousin. On neither occasion stringent conditions were imposed at the time of his release on parole. It cannot be gainsaid that when a person is charged with acting in a manner prejudicial to the maintenance of public order, stringent conditions are required to be imposed at the time of his release on parole.

5. Learned Assistant Government Pleader Shri Dave for the respondents has submitted that parole was given to the petitioner on both the occasions on humanitarian grounds and it was not thought fit to impose any stringent conditions on humanitarian grounds keeping in mind the mental frame of the detenu at the relevant time. Release of the petitioner on parole without imposition of stringent conditions on the occasion of his mother's demise might be justifiable but not at the time of his male cousin's death. It is not the case of the respondents that, though the detenu has been branded as a bootlegger in the impugned order of detention, a vigil was kept to see whether or not he was attempting or trying to indulge in any bootlegging activities during his parole period. In that view of the matter, release on parole of the petitioner without imposition of any stringent conditions or without keeping vigil over his activities during the parole period would render the continued detention of the petitioner unjustified in view of the

aforesaid two binding Division Bench rulings.

6. In view of my aforesaid discussion, I am of the opinion that the impugned order of detention at Annexure A to this petition cannot be sustained in law and it has to be quashed and set aside.

7. In the result, this petition is accepted. The detenu is ordered to be released forthwith if no longer required in any other case. The rule is accordingly made absolute with no order as to costs. Direct service is permitted.
